

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	No. 13 CR 293
v.)	
)	Judge John J. Tharp
CEDRIC MOORE)	
)	

DEFENDANT MOORE’S MOTION IN LIMINE TO PROHIBIT DETAILED
DESCRIPTION OF THE JOB OF “TACTICAL OFFICERS”

Defendant CEDRIC MOORE, by the Federal Defender Program and its attorney DANIEL HESLER, respectfully moves this Honorable Court, pursuant to Federal Rules of Evidence 402 and 403, for an order prohibiting the government from introducing evidence that the plainclothes officers in this case, as tactical officers, normally focus on gang, drug, and gun cases in high crime areas. The evidence in this case is that the officers reportedly stumbled across Mr. Moore on their way to lunch, and so the fact that the normal job of a tactical officer is to look for dangerous drug dealers with guns has little bearing on this case, and significant prejudicial potential. In support of this motion, Mr. Moore states as follows:

I. Context and introduction

Cedric Moore is charged with one count of being a felon in possession of a

firearm on August 1, 2012. The discovery suggests that two police officers were driving westbound on Grand Avenue on their way to lunch when they saw someone on a bicycle in an alley, and decided to investigate. This case ensued.

The officers involved are tactical officers. In the understanding of defense counsel, that means that they dress in plain clothes, drive an unmarked car, and have greater geographical freedom than normal uniformed patrol officers.¹

Additionally, their focus tends to be on offenses such as guns, drugs, and gangs. It is this last set of characteristics that this motion in limine focuses on. As an example, in a firearms and narcotics trial that occurred in 2011, the government in this district introduced a tactical officer to a jury by asking initially about their name, training, and experience. They then asked the following:

Q: And, generally speaking, what do you do as a tactical officer?

A. Generally speaking, as a tactical officer, mostly we focus on high-crime areas that, you know, concentrate in, like, narcotic sales and guns. But from time to time if there's any special mission that our commanders -- that the community needs to be accomplished, they'll task us with that as well.²

¹The reputation of tactical officers is such that it may help or hurt either side depending on the perspective of the listener. *See, i.e.,* www.coachwyatt.com/chicagocops.htm (blog of football coach about ride-along with Chicago police tactical officers) (copy attached as exhibit C).

²The case was *United States v. Chapman*, 10 CR 783, tried before Judge Kendall in May of 2011. There was no comparable motion in limine raised in that case. It is understood that the present witnesses would not use an identical definition of their job,

It is defendant's contention that there is little probative value in telling the jury anything more than the facts that the police were in plain clothes and driving an unmarked car is unnecessary, and that anything more risks raising unfair inferences in this case.

Discussion

Rule 402 of the Federal Rules of Evidence provides that evidence which is not relevant is not admissible. FRE 403 provides that evidence may be excluded if "its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury." The Supreme Court has ruled that the Constitution permits judges "to exclude evidence that is 'repetitive ..., only marginally relevant' or poses an undue risk of 'harassment, prejudice, [or] confusion of the issues.'" *Crane v. Kentucky*, 476 U.S. 683, 689-90 (1986) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)).

In the instant case, any evidence about what tactical officers "normally" do is irrelevant. In their normal work, these officers may focus on major drug targets, gangs, and firearms, but the indications are that that was not what they were focused on at 11:22 a.m. on August 1, 2012. The discovery suggests that they

but almost any imaginable description of what tactical officers do will raise similar problems.

were on their way to lunch, and were driving down Grand avenue. According to the discovery, it was simple happenstance that brought them in contact with Mr. Moore. What they normally do does it not make it any more or less likely that Cedric Moore possessed a gun at that time.

Additionally, if a jury hears that these officers are specifically tasked with job of removing drug dealers, “gangbangers,”³ or firearms from the streets, they may decide that it is more likely that that is what occurred here. This is not a fair inference; Mr. Moore’s guilt (or lack thereof) should be decided on the basis of what happened on the morning of August 1, 2012, and not on the basis of any perceived specialization on the part of these officers. Thus, this is the unusual situation where a what might otherwise be simply a job description of the witnesses may create unfair and prejudicial inferences.

Thus, in this case, defining exactly what a “tactical” officer is runs the risk of creating unfairly prejudicial inferences that are not justified by any meaningful probative value. This is the quintessential situation where Rule 403 balancing applies. The fact that they normally go after bad people has little probative value in this case, but increases the risk that the jury will assume that Cedric Moore is

³There are indications in the discovery that some Chicago Police officers may have used the term “gangbanger” in describing Mr. Moore to a witness in this case on the day of the arrest.

one of their usual targets. The defense has no objection to the witnesses identifying themselves as Chicago Police Officers, their years of experience, or the fact that they were in plain clothes and driving an unmarked car. While the defense recognizes that it is normal for the government to explain who its witnesses are, the situation is different for tactical officers. Any detailed description of what a tactical officer is creates an inference of who the defendant must be.

CONCLUSION

WHEREFORE, Mr. Moore respectfully requests that this Honorable Court issue an order barring the government or its witnesses from defining what there job is as tactical officers any further than the fact that they were in plain clothes and driving an unmarked car.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, Daniel J. Hesler, an attorney with the Federal Defender Program hereby certifies that in accordance with FED.R.CIV.P5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following document(s):

**DEFENDANT MOORE’S MOTION IN LIMINE TO PROHIBIT
DETAILED DESCRIPTION OF THE JOB OF “TACTICAL OFFICERS”**

was served pursuant to the district court’s ECF system as to ECF filings, if any, and were sent by first-class mail/hand delivery on November 12, 2013, to counsel/parties that are non-ECF filers.

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EXHIBIT C

HOME

PHOTOS FROM MY DAY WITH THE CHICAGO POLICE



Relax. There's nothing to be afraid of. These are not gang-bangers. These are real, sworn police officers. Honest to God. They're all members of the TAC (Tactical) team, assigned primarily to narcotics enforcement, and my life was in their hands for an entire shift. From left, Al Antoniacci, Inez Benson, Cory Chapton (in front), Greg Stacker (behind him), Bill Murphy, Haniff Mosi (in front), and Sergeant Eddie Howard.



Roll Call: "Be careful out there." (They don't really say that.)



Inez Benson, an "aspiring rapper" and, according to Bill, a good cop



Yes, our car was unmarked, but come on - who else but the police would drive a Crown Victoria around the ghetto?



All they found on this guy was a pipe and a Brillo pad. He said he was "retired" from the Four Corner Hustlers

Sgt. Eddie Howard tells Bill Murphy not to leave me out there.



Bill and I, just before setting out to rid Chicago of its massive drug problem



There goes one! Even I could spot this "sex worker" out on the job. The "beat car" beat us to her.



What kind of profiling is this? I mean, come on - a *Volvo*? With a *smiley face* for a front plate?



A group of older gentlemen chose the wrong spot - a high-activity location - to be holding a class reunion..

The car's owner says, "You lookin' for drugs and guns in there? You ain't gonna find any. I don't f-k with it." Today, he was right.



Al pats the guy down while Bill searches the car. Bill, finding nothing, says, "Want to know why I'm letting you go? Because you look like Ben Wallace."

A bunch of teenagers comes up clean. Today's safety tip: Remember, kids - it's illegal to be hanging out on the steps of abandoned houses

On Sunday, April 22, it was my great honor to take part in a "ride-along" on the streets of Chicago's South Side with two plainclothes police officers, Bill Murphy and Al Antoniaci.

The Chicago Police Department is divided into five areas, and each area is divided into five districts.

Our district is on the South Side, 727 East 111th St. to be precise. It is, I am told, 98 per cent black, one per cent white, and one per cent Hispanic.

Just up the street is the House of Hope, an enormous church presided over by the Reverend James Meeks, who by no coincidence is also a state senator. The Church, opened in 2005, cost \$50 million, and seats 10,000, making it one of the largest in the country.

The church also has three regulation-sized basketball courts, a \$1.4 million sound system, and two 19-foot-by-11 foot screens.

The parking lot is huge, with over 2,000 places, but finding a parking space has become such a problem that

it has been necessary to add additional services.

On hand for the opening services in 2005 were the Governor, of course, but also the Rev. Jesse Jackson and a senator named Barack Obama.

Sunday, my day to ride-along, is beautiful. The forecast is for temperatures in the 70s. From the point of view of my seeing any "action," this is good, says Bill Murphy. The weather's been bad lately, so now all the "sh--heads" will be out on the street.

After a brief meeting of the TAC (Tactical) team conducted by Sergeant Eddie Howard (reminiscent of a football staff meeting), we headed for breakfast, and then on to work.

It was Bill, Al Antoniaci and I, in the maroon unmarked Ford Crown Victoria. It's a big car on the outside, but there's not a whole lot of room in the back seat. I was hoping I wouldn't have to share it with some "sh--head."

Al was born and raised nearby in the Pullman section, so-named because it was the site of the Pullman factory, where the Pullman Palace Car Company once made all the sleeping cars used on American railroads. It was a real company town, and the factory housing still stands, considerably updated. Al still lives here, in the same neighborhood his father came to from "the old country."

He still makes wine, a skill taught him by his father, and he showed me his wine cellar.

He is proud of his neighborhood, and spoke with disdain - I won't use his words - of people who moved in, courtesy of "Section 8" housing assistance (which provides "affordable housing" by giving vouchers to people so that they can move next door to you), and - no surprise - their arrival coincided with break-ins and robberies in the neighborhood.

"They gotta be out by May first," he said, "and we're all going to celebrate."

We headed first for Altgeld Gardens, an enormous, sprawling housing project so well-known to Chicago police over the years (it's been the scene of more than 600 murders) that it warrants a map of its own on the walls of the TAC Team's office.

Many of its units are boarded up right now, as the city pours millions into refurbishing them. Cory Chaptin, a team member, figures they'll be finished just in time to make it a long, hot summer. Al is skeptical about the expenditure of taxpayer dollars: "I give it a few years and it'll be trash again," he said.

A group is hanging around the one store in the project, and because it's a well-known drug-activity area, we pull up and the cops get out. They approach a guy and begin to question and frisk him. They find an open "40" wrapped in a brown paper bag and pour it out (it's illegal in Chicago to drink in a public thoroughfare), but the guy says it wasn't his.

Al says to the guy, "You still a member of the Four Corner Hustlers (a gang active in the district)?"

"No, I'm retired," the guy says.

Al, whose sarcasm is beginning to impress me, asks, "How's your pension plan?"

The guy probably doesn't get it, but Bill, noting that an awful lot of drug users have bad teeth, has to get his jab in, too - "Do you get dental?"

They find a knife and a pipe and a Brillo pad on the guy, evidence of drug use, but there's nothing to arrest him for, no reason to deal with him any further. But he is in a high-activity area, and in the interest of "Narcotics Dispersal," they tell him to vamoose and stay away for 24 hours.

As we drive off, I mention how generally mellow the whole transaction was. As they were checking the guy out, people kept walking by without noticing or commenting, and the guy was what you would call properly submissive.

How mellow things were was pretty much up to the guy, Bill said. "If Al's having a bad day and I'm having a bad day, somebody else is going to have a bad day."

I asked Bill how they compared a giant, sprawling complex full of low-rise units, such as Altgeld Gardens, with a high-rise project, such as the notorious Cabrini Green.

What's tough about the big buildings, he said, is that it's tough to go after anybody in there. "They'll pee on the floor and put Vaseline on the railings.

Besides, he said, "They all know everybody. They all know where they can go and hide."

Complicating matters is that over time, far from any official scrutiny, they have cut through walls, making it possible to move from apartment to apartment without having to use the hallways.

Our discussion brought to my mind "Coach Jesus." Now a detective and clean-cut, when I met him a year ago had a beard and wore his hair shoulder-length, and the kids on his youth team hung the nickname on him. Coach Jesus had to be the bravest guy I've ever met. It was his job to pose as a hippie stoner and make incriminating drug buys, which often meant going up into the high-rise projects, away from any radio contact (they always checked him for a wire) and any hope of any assistance from his fellow officers should someone get wise to him.

As we cruised along a street, Bill pointed out a big guy as a neighborhood drug lord.

"You got a bag for me?" Bill called out the window.

The guy walked across his yard and, expressionless, held up a trash bag.

We drive along Kensington Avenue, where the district's Hispanics live, and Al shows me the railroad viaduct from which some Hispanic guys fired down at a group of blacks playing basketball, to avenge a shooting of a Hispanic guy.

We pass an old bag lady slumped on the curb. "Wanna take her home and scrub her up and give her a hot meal?" he asks. I'd say we're looking at some serious scrubbing.

Al's been working this area for quite a few years, and he knows it inside-out, as evidenced by the way he's able to make his way through the labyrinth of back alleys. He sees a guy he recognizes and says, "He's 29. I locked him up when he was 16."

I asked if there was any hard feelings, and Al said, "He tells me, "now I'm married, and I've got kids, and I don't do that sh-- any more."

"Yeah, right."

TO BE CONTINUED

We drive through an alley and Bill waves at a kid.

The kid responds with a "Whussup?"

Bill turns to me and explains the simple rule of greeting a policeman: "When you wave, use all your fingers."

Because it's Sunday, the churches are busy. Most of them are what you'd call storefront churches, and it seems as if there are three on every block - one on each corner and one in the middle. Perhaps to compensate for the plainness of their appearance, they are creatively named, to say the least: "BREAD OF LIFE CHURCH OF GOD IN CHRIST... THE GATE CALLED BEAUTIFUL... WORD OF GOD LIFE CHANGING MINISTRIES"

By now, though, it's about 1:30 in the afternoon, it's getting warm out, and we're starting to see some people who clearly have not been attending church services.

"The sh--heads are starting to get up," notes Bill.

We peek down an alley and see some guys drinking. Whether it's in a public thoroughfare is a close call, and Bill and Al give it a pass. Besides, the party's just getting started. If it's still going on at 10 o'clock or so, there could be arguments, followed by problems - "depend son how mad they get," Bill says.

I say something about maybe the knives coming out, and Bill says, "We don't get the knives any more. They get a gun and settle it."

They did recall one knife incident - they arrested a woman who was very proud of her carving skills, telling them, "She slapped me in the face and I stabbed that bitch!"

We come to the T-intersection of two alleys, and what looks like a scene from an other-worldly type of movie. People who have seen better days sit on whatever they can find to sit on, including the pavement, slump against walls, and mill around in the alley. Bill and Al know most of them, and exchange what seem to pass for pleasantries.

One older woman who apparently can't quite put her days as a hustler behind her looks into Al's window and makes him an offer he couldn't even begin to consider: "Lemme get my knees dirty for you," she says. Sheesh.

We go to the end of the alley and Bill and Al check out a couple of guys sitting in an old blue Volvo. A Volvo! And I'll be damned if it doesn't have a smiley face where the front license plate should go.

They are clean - Have a nice day, fellows.

I continue to be impressed by how routine, how matter-of-fact this all is. How routinely the people submit to

police interrogations and searches of their cars. Maybe it's because the guys we're running across have nothing to hide.

I do notice, by the way, that Bill doesn't bother asking "Have you even been locked up?" It's much more efficient to cut right to the chase and ask, "When's the last time you were locked up?"

We pull another car over, and a guy with a big afro gets out and puts his hands on the car as instructed. As Bill searches the car, Al searches his pockets and then pats him down. I note that the first order of business as soon as they come across any cash in someone's pockets is to put it in the guy's hands, in full view, as they rest on the roof of the car.

This guy is also clean, and Bill tells him they're letting him go because, he tells him, "You look like Ben Wallace."

As we drive off, I ask Bill why they pull the guy over, and he says, "He had a 'don't stop me' look on him."

We get a report of a minor theft from a nearby pharmacy - we are to be on the lookout for a "male black, white tee-shirt."

Says Bill sarcastically, "He ought to be easy to find." (For the uninitiated, white tee shirts, worn blouse-like so they come almost to the knees, appear to be the uniform of the day.)

We drive to the store and ask a few questions, then cruise the neighborhood streets. No luck. Then we turn a corner and halfway down the block are at least a dozen kids, in white tee shirts, playing basketball.

"Take your pick," says Al. This search is clearly fruitless.

Uh, oh - we get a call that there's a kid with a gun in a nearby project.

Al punches it and we are off. We haul ass. I mean we HAUL ASS.

This tends to be a bit exhilarating, when you find yourself going 50 miles an hour or so down narrow streets lined with cars on both sides, barely leaving one lane for traffic. I see little kids on both sidewalks, playing and riding their tricycles, and I pray to God that none of them will get a sudden impulse to dart into the street.

Every intersection is an adventure. We have a siren which Al and Bill hit as we approach intersections, and we do have small flasher lights, but we're still in an unmarked car, and not even the people who hear the siren necessarily understand that it's coming from our maroon Crown Victoria. Some people pull right over, but others need a little more convincing, so they get another blast of the siren.

We arrive at the project along with a beat car and find nothing there. Damn.

Next stop is a house across the street from some railroad tracks. Someone's inside the house with a weapon, but Sergeant Howard and Cory Chaptin are already there, joined by a uniformed officer, and they've got things under control, so off we go.

Next we check out a bunch of teenagers sitting on the steps of an abandoned, boarded-up house. They clasp their hands behind their heads while being searched, but everybody is clean. Al jokes with the smallest of

them, "You don't have a *gun*... you don't have any *weed*... what *good* are you?"

An Escalade drives by. It is a ghetto favorite, although Land Rovers are becoming popular. The Escalade gets Bill's attention because there is always the chance that it won't have front plates. Why is that, I ask? It's a fashion thing, says Bill - "Guys with Escalades don't like having front plates."

As we drive off, I note that with all the people they've checked out today, and with all the people walking by, no one has even stopped and taken notice, let alone made a comment or attempting to interfere. Not always the case, Bill said. There's always the one time that you stop somebody and "they all come out. And it's always the females."

Damn! I look out and recognize the Pullman factory! We're back at the station house - the district headquarters.

What's going on here? Is it over already?

Yes, I'm told. That's it. We're done.

A surprisingly slow day, as it turns out. No arrests, no guns discovered. Bill apologizes to me for the lack of action, but there's no need to apologize, because for me it's been exciting enough, and very educational.

I take off the bullet proof vest and find that my shirt underneath it is soaked with sweat.

I want to put the vest back on and go out again, but Bill and Al would think I was nuts. Their shift is over. They've got families to get home to.

Me? I want to say, Please, please, please - can I do another ride-along? *Please, please, please?*